

throw out any facts, I used them as they did.

BY MR. GRIMSLEY:

Q Is it possible, sir, that without segmentation of the Pre-MN annuities into a separate account, that Northwestern Mutual after 1985 would have calculated a different DIR applicable to the portfolio?

A Well, they don't calculate a DIR applicable to the portfolio. The portfolio each year generates the DIR, and so they're not calculating that. That's the result of the portfolio. Now, would they have changed their portfolio? Certainly they could change their portfolio every year. They did. They made investments, and some investments terminated and they made new investments. So they impacted that. And certainly what they did do, the facts of the matter were what we used and what are used to develop this formulation.

Q Do you know what the portfolio rate DIR would have been in a world in which Northwestern Mutual had not made the 1985 change?

MR. KERSTEN: Objection as repetitious. Go ahead and answer.

THE WITNESS: Again, that's a speculative scenario because that scenario never existed, so I didn't think about what would happen in a world that

didn't exist. I utilized the real world and the real values that did exist, and that's -- that's the basis for this methodology and it's the basis for the quantification.

BY MR. GRIMSLEY:

Q To be fair, sir, the "but-for" world that you calculated and prepared a model to reflect didn't exist either, did it?

MR. KERSTEN: Objection as argumentative.

THE WITNESS: Oh, I have said several times today that the "but-for" world is a concept that I have used, it never existed, individuals were never in it, they made no decisions based on being in it because they weren't in it, and it is only used as a theoretical to determine a difference on a current basis. "Current" being described as today for those policies remaining in force and the date of termination for those Pre-MN annuitants who terminated their policy at some time prior to today.

THE VIDEOGRAPHER: About 5 minutes on the tape.

MR. GRIMSLEY: Why don't we take a break then.

THE VIDEOGRAPHER: This will conclude Disk 1. We're going off the record, the time 11:10 a.m.

(Off the record.)

THE VIDEOGRAPHER: We're back on the record. This is the beginning of Disk No. 2 of the deposition of Robert Hoyer. Today's date, May 17th, 2013. The time, 11:24 a.m.

BY MR. GRIMSLEY:

Q Turn to Paragraph 48 on Page 16 of your report, sir.

A (Witness complies.)

Q It reads, "This report illustrates how Differences can be calculated in a mechanical way for each individual annuitant with basic annual information and a limited number of variables. Assumptions of end of year deposits tend to underestimate differences." Do you see that?

A Yes, sir.

Q What did you mean by "tend to underestimate"?

A Well, clearly the difference is conservatively stated, and hence the word "tend" is used, that it need not be every exact situation but certainly in most.

Q Are there situations in which the assumption of end-of-year deposits could overestimate the difference?

A It is possible, but de minimis.

Q In what circumstances would it be possible to

overestimate the difference using the assumption of end-of-year deposits?

A I would say that it's never a scenario where you would overestimate the difference in any way other than in a de minimis way, but a de minimis differential theoretically could exist if I were to adjust the timing of deposits and withdrawals and mathematically play with those numbers to get a de minimis negative difference.

Q With regard to the extent to which the assumption underestimates the difference, that would not necessarily be de minimis, would it?

A I would use a different term. Rather than de minimis, I would say immaterial.

Q If a class member had, in fact, made all of their deposits at the first of the year rather than at the end of the year, the assumption the deposits were made at the end of the year would materially underestimate differences?

A No, sir, it would not.

Q Why do you say that?

A Because those amounts are in fact offset because the same assumption is used for any withdrawals, partial withdrawals or policy loans, they are also assumed to be at the end of the year. So any such transactions

1 would tend to mitigate and it would not be a material
 2 difference in any regard. There would be an
 3 immaterial but conservative difference.
 4 Q Imagine a putative class member who did not withdraw
 5 anything at any point in time and did not borrow
 6 against his or her account. Imagine also that that
 7 individual always deposited their premiums at the
 8 beginning of the year rather than at the end. Your
 9 assumption of end-of-year deposits would materially
 10 impact that particular class member?
 11 A No, I would not agree with that.
 12 Q What would the impact be to the calculation if you
 13 assumed beginning-of-year deposits as opposed to
 14 end-of-year deposits?
 15 A Again, the formula would be readily applicable. It
 16 would apply to all as a group or individual
 17 annuitants; and it would tend to be a reasonable and
 18 reliable estimate, but it would tend to overstate the
 19 difference if I made such an assumption.
 20 Q Have you made any effort to determine the extent to
 21 which the assumption of year-end deposits
 22 underestimates differences on a class-wide basis?
 23 A Yes, I have, and that's exactly why I'm telling you
 24 that such difference is immaterial to the
 25 quantification of difference. It is a conservative

1 estimate that I have made, but it is immaterial to
 2 the aggregate differential.
 3 Q Where in your report is it set forth a calculation of
 4 what the amount of underestimated difference is as a
 5 result of your assumption of year-end deposits?
 6 MR. KERSTEN: Could you just re-read that?
 7 (Question read aloud by the reporter.)
 8 THE WITNESS: That's not in my report
 9 because I did not do a quantification, I did an
 10 analysis and concluded that such differential would
 11 be immaterial to the aggregate quantification of
 12 difference, and the aggregate quantification would be
 13 aggregate for the entire policy group or aggregate
 14 for an individual.
 15 BY MR. GRIMSLEY:
 16 Q Have you attempted any quantification of how much
 17 your assumption of end-of-year deposits
 18 underestimates the difference for any particular
 19 putative class member?
 20 A Only to the extent as to the propriety of this
 21 mechanical process I did do such analysis and made
 22 the conclusion that this methodology is an accurate
 23 and reasonable representation of the difference.
 24 Q I am asking only whether you actually calculated how
 25 much the assumption of end-of-year deposits would

1 underestimate any particular class member's
 2 accumulated difference.
 3 A Didn't I answer that?
 4 MR. KERSTEN: I think you did, but go ahead
 5 and --
 6 THE WITNESS: I will answer it again. I
 7 did not do a quantification of such difference, I did
 8 an analysis of such difference.
 9 BY MR. GRIMSLEY:
 10 Q Did you --
 11 A So where is that quantification -- I did not do a
 12 quantification, I did an analysis and concluded that
 13 the formula that I'm presenting is a fair and
 14 accurate representation of the difference and that
 15 any such differential is immaterial.
 16 Q Did you do an analysis, putting aside quantification,
 17 of the amount of underestimation of the accumulated
 18 difference for any particular policyholder?
 19 A I did an analysis of how the formula would apply and
 20 what the implications would be to that result. I did
 21 not numerically calculate such.
 22 Q For which class members did you actually do that
 23 specifically?
 24 A I did it by looking at my formula and looking at the
 25 values that are -- that we have in this regard and

1 how that may either overstate or understate the
 2 calculation in this regard, and I concluded that it
 3 was immaterial.
 4 Q You don't know sitting here today how much your
 5 assumption understates accumulated difference for any
 6 particular class member, do you?
 7 A I know that such differential is immaterial.
 8 Q You have done it for every single class member on an
 9 individualized basis?
 10 A I have looked at the formula and determined that the
 11 formula is applicable and is a realistic and
 12 reasonable representation of the difference and that
 13 that assumption, while tending -- tending to be
 14 conservative is immaterial.
 15 Q Have you, in fact, tested your formula against any
 16 individual class members other than Ms. LaPlant?
 17 A Have I quantified using that formula on any
 18 individual annuitant, and that answer is no.
 19 Q Have you attempted to quantify the amount of
 20 underestimation that results from your assumption of
 21 end-of-year deposits for any particular--meaning the
 22 person has a name--annuity policyholder?
 23 MR. KERSTEN: Objection as repetitious.
 24 THE WITNESS: I just said I have not done
 25 that in this instance. I would like to add to that.

Can I? Can I --

MR. KERSTEN: Sure, go ahead.

THE WITNESS: Well, as stated in my report, this is an assumption which tends to produce a conservative estimate of the difference. I have also stated in my report that to the extent more detailed information were made available by the company, that this same mechanical formulaic approach would incorporate that information and, again, produce a reasonable, reliable estimate of the difference.

BY MR. GRIMSLEY:

Q To your knowledge, do the individual policyholders have that more detailed information that you just referred to?

A I would believe that they were provided it and both the company and the individuals had it at some time. I would think it more likely that the company would be -- would have more of such information currently.

Q You have not actually interviewed any class members to determine whether, in fact, at least some of them have more information than Northwestern Mutual does on that score, have you?

A The only information that a policyholder can conceivably have on that score, as you say it, is that information which was given to them by

Northwestern Mutual, therefore the basis for my conclusion that Northwestern Mutual would be the appropriate source to provide such information.

Q Well, a policyholder would have information potentially as to when and how much a deposit was made into their annuity account; correct?

MR. KERSTEN: Are you representing they would have that, counsel?

THE WITNESS: I would dare say they would not have that to the extent that Northwestern had that.

BY MR. GRIMSLEY:

Q Have you actually investigated that to determine whether in fact that is true?

A I have worked in this industry for 40 years, and I will tell you factually, not opinion wise, but factually that many, many policyholders do not retain information as to when a transaction took place in 1992.

Q Is it possible that some did?

A It's possible that some did, but it is definitive that the company has.

Q In fact, it's definitive, though, that at least some policyholders would have kept that information, don't you think?

A Oh, I'm sure that in the 35,000 class members in this instance or thereabouts, that I'm sure someone has kept that information, but I -- I don't see why that has any bearing on my formula or whatever.

Q Is it possible in your mind that some people -- policyholders would have deposited less money after 1985 than they did in the actual world, in a world in which Northwestern Mutual never made the 1985 change?

A Absolutely.

Q Is it possible that policyholders would have borrowed more against their policies in a world in which Northwestern Mutual never made the 1985 change?

A It's possible that policyholders would do anything; and in a different scenario, policyholders might do different things. Certainly that is a consideration, but I haven't spent much time analyzing it.

Q And is it possible that policyholders would have withdrawn more money in a world in which Northwestern Mutual had not made the 1985 change than they did in the actual world?

A Well, that is one where I can say that a prudent individual and a reasonable estimate of what somebody theoretically may have done would say that fewer people would have withdrawn their policies if the "but-for" world or if the 1985 change, you know, did

not exist.

Q But is it possible that there are some people who would have withdrawn more in a world in which the 1985 change had never been made?

A Again, I have no opinion as to what an individual may or may not do in a scenario that didn't exist, so I can only talk about what a reasonable and prudent group would tend to do over time, not what any given individual would do.

MR. KERSTEN: You know, I object to this whole line of questioning on which we have now spent the better part of at least two hours as wholly immaterial and a waste of time.

BY MR. GRIMSLEY:

Q You also assumed for purposes of your report in the "but-for" world that individuals who surrendered their policies did so at the end of the year; is that correct?

A That is correct.

Q If, however, people surrendered their policies before the end of the year, would your assumption of end-of-year surrenders tend to overstate the accumulated difference?

A It would tend to overstate. It is a mitigating assumption relative to the contra-assumption that

1 deposits are made at the end of the year.

2 Q Have you done anything to quantify the amount that

3 the assumption of end-of-year surrenders overstates

4 the accumulated difference?

5 A In an attempt to quantify the extent of surrenders in

6 a vacuum, no. To identify the implications or the

7 magnitude of the aggregate assumption, which was used

8 for both deposits and terminations, yes.

9 Q Where in your report is the calculation of the

10 aggregate assumptions that shows that your

11 assumptions on the whole tend to understate the

12 accumulated difference?

13 A I did not do a quantification of that, I did an

14 analysis of that. And where is it stated? I don't

15 know offhand, but if we walk through page by page it

16 would say that by assuming the end of the year, it is

17 a conservative estimate, but an immaterial

18 differential.

19 Q But you did not do anything to quantify the

20 offsetting assumptions of surrenders at the end of

21 the year versus deposits at the end of the year?

22 A I did analysis of that, not quantification, but

23 analysis of that to enable me to opine that such

24 differential is immaterial.

25 Q What analysis did you do specifically, sir?

1 A I looked at values and looked at the methodology and

2 mathematically analyzed the extent to which I would

3 either be high or low given a given cash transaction;

4 concluded that since I'm making the same assumption

5 on both deposits and withdrawals, that there is

6 certainly a mitigation one to the other. However,

7 for most policies, deposits are greater than

8 withdrawals, for especially in-force policies, and

9 hence the tendency would be a conservative

10 estimation, but not a material one.

11 Q But you have done no effort to actually quantify

12 what --

13 MR. KERSTEN: Objection as repetitious.

14 MR. GRIMSLEY: Hey, buddy, let me finish my

15 question and then you can object.

16 MR. KERSTEN: Okay, finish.

17 BY MR. GRIMSLEY:

18 Q You have made no effort to actually quantify what the

19 amount of overestimation based on the assumption of

20 end-of-year surrenders would be versus the

21 underestimation for the assumption of end of year

22 deposits?

23 A That's not correct. I have done analysis to enable

24 me to conclude that such differential is immaterial,

25 so I did enough analysis to reach that opinion. A

1 quantification, which is a numerical determination,

2 is not what I did. I did an analysis to enable the

3 conclusion.

4 Q Can you describe your analysis that you performed to

5 come to that conclusion in sufficient detail for a

6 court to understand it? Because that's ultimately

7 the person who is going to be looking at this.

8 MR. KERSTEN: Objection, that's already

9 been done repeatedly over the last two hours.

10 THE WITNESS: Yes.

11 BY MR. GRIMSLEY:

12 Q The description you have provided is the full

13 description you believe would be necessary to explain

14 to a court what the analysis was that you performed?

15 A Yes, sir.

16 Q In a world in which Northwestern Mutual had not made

17 the 1985 change, is it possible that some

18 policyholders would have surrendered their policies

19 sooner than they did in the actual world?

20 A I have answered this question fifteen times, which

21 is, I have no opinion as to the actions of some

22 policyholders or individual policyholders. I -- My

23 professional background, my experience says that

24 rendering opinion on what individuals may or may not

25 do is beyond the scope of my capability, so I have no

1 opinion.

2 Q Would the best people to ask that be the individual

3 policyholders themselves as to what they would have

4 done?

5 MR. KERSTEN: Objection on the assumption

6 that would be legally competent evidence.

7 THE WITNESS: No, I think that would be

8 kind of a ridiculous request or statement.

9 BY MR. GRIMSLEY:

10 Q You think it would be ridiculous to ask individual

11 policyholders what they would have done in the

12 "but-for" world?

13 MR. KERSTEN: Same objection as before.

14 THE WITNESS: That's correct, they don't

15 know what a "but-for" world is, it's something I

16 invented. So if you go to individual policyholders

17 and say what would you have done in 2002 if you lived

18 in Bob Hoyer's "but-for" world, I would dare say you

19 would not get an answer which would be reasonable and

20 appropriate.

21 BY MR. GRIMSLEY:

22 Q So there is nobody to ask really about what somebody

23 might do in Bob Hoyer's "but-for" world?

24 A It never existed, it doesn't exist now, so I think

25 individuals would have a hard time concluding what

1 they would do in a scenario -- especially what they
2 would do -- what they would have done years ago in a
3 scenario that didn't exist, then or now. I would say
4 that's a very difficult question to go ask an
5 individual.

6 Q Have you done any market research to determine what
7 people have done in similar situations where changes
8 were not made?

9 MR. KERSTEN: Objection on the assumption
10 there is a similar situation where the undisputed
11 record is Northwestern is unique in the insurance
12 industry for having done this.

13 MR. GRIMSLEY: "Objection to form" is the
14 only appropriate objection.

15 MR. KERSTEN: That's my objection, to form.
16 It states an assumption that's contrary to the
17 record.

18 MR. GRIMSLEY: The word "form" is the
19 appropriate objection, not the explanation of why
20 it's an objection.

21 BY MR. GRIMSLEY:

22 Q Can you answer it, please?

23 A It's been quite a while since the question was asked,
24 but I believe the question was have you done market
25 research. I don't do market research.

1 Q You're not an expert in market research or consumer
2 behavior?

3 MR. KERSTEN: Objection as double in form.

4 THE WITNESS: Yeah, I don't know how to
5 answer that question. I have developed insurance
6 products, which are certainly based on how the
7 marketplace will react to such policies. I'm not a
8 marketing expert, but an awareness of that area is
9 something that certainly fits in the activities that
10 I have performed.

11 BY MR. GRIMSLEY:

12 Q And all you can say in this case is that in the
13 "but-for" world different people would have acted
14 differently?

15 A I have no opinion as to how individuals will act in
16 any scenario.

17 Q We talked a little bit about this earlier, but I want
18 to go into a little more detail. You assume that the
19 but-for DIR for annuity policies who have direct
20 recognition and no loan balance would be equal to the
21 corresponding DIR for life insurance policyholders?

22 A That's correct. I assume that that value is the
23 appropriate benchmark applicable to those
24 individuals.

25 Q You are aware, however, that in the years prior to

1 the 1985 change the DIR for Pre-MN annuity
2 policyholders was different than the DIR for life
3 insurance policyholders?

4 A No, not in all years. In certain instances it was,
5 as stated in my report.

6 Q But you acknowledge that there were certain years
7 prior to the 1985 change in which the annuity rate
8 DIR was different from the life insurance DIR?

9 A I state in Paragraph 25, there is a historical
10 comparability, not equality.

11 (Deposition [Exhibit No. 5](#) was marked for
12 identification.)

13 BY MR. GRIMSLEY:

14 Q I'm showing you what is being marked as Deposition
15 [Exhibit 5](#), and this was a trial exhibit at the trial
16 that I believe you testified at. Do you recognize
17 this chart?

18 A I have seen many charts along these lines, so I do
19 not know if I recognize this particular one.

20 Q Looking at these numbers, do you have any reason
21 sitting here to dispute the accuracy of them?

22 A I have neither a basis to dispute the accuracy nor to
23 conclude that these are accurate. As I say, I'm not
24 sure if I have seen this particular exhibit.

25 Q You see that there is -- there are three columns here

1 showing DIRs for life rate, Pre-MN rate, and the CRA
2 rate?

3 A Yes, sir.

4 Q I want to focus on the life rate and the Pre-MN rate;
5 okay? Okay.

6 A You can do that. I have no objection.

7 Q I notice, sir, that you're looking over comparing
8 [Exhibit 5](#), which is trial Exhibit 528, to a chart
9 that is in your own report.

10 A Yes, sir, I am.

11 Q Your report contains a chart that is somewhat similar
12 to this on Page 6, which starts with 1986 rather than
13 1982 and does not have the CRA rates on it; correct?

14 A I wouldn't categorize it as somewhat similar in that
15 they appear to be the same other than the fact that
16 "CRA" is on one exhibit, so they appear to be equal
17 at first glance otherwise.

18 Q If you look at the year 1982, what was the
19 differential between the life DIR and the Pre-MN DIR
20 in [Exhibit 5](#)?

21 A Well, [Exhibit 5](#), which goes for years beyond what was
22 in table one that I was just comparing, the
23 differential is 40 basis points.

24 Q And which DIR is lower in [Exhibit 5](#)?

25 A In [Exhibit 5](#), the Pre-MN annuitants.

1 Q Look at 1983. What is the differential between the
2 life DIR and the Pre-MN DIR?
3 A 15 basis points.
4 Q And which DIR is lower as between the two?
5 A Pre-MN annuitants.
6 Q Look at 1984. What is the difference in the DIR
7 between life and Pre-MN policies?
8 A 15 basis points.
9 Q Of the two policies, which is lower?
10 A The Pre-MN annuitants in this instance.
11 Q And in 1985 the rates are the same; is that correct?
12 A Yes, sir, they are.
13 Q Of the years 1982 through 1985 shown on this exhibit,
14 in any of those years is the Pre-MN annuity DIR
15 higher than the life DIR?
16 A As shown in this exhibit, there are none. As shown
17 in other exhibits, there are some.
18 Q Which ones? Which exhibits?
19 A Oh, I would have to -- I would have to go get them.
20 Q In what years were the Pre-MN DIRs higher than the
21 life DIRs?
22 A Sometime during this period for certain
23 categorizations.
24 Q When you say "certain categorizations," what do you
25 mean?

1 A Different policy loan rates, et cetera.
2 Q You're familiar with the fact that there are tax
3 qualified and non-tax qualified annuities?
4 A Yes, sir.
5 Q And those are different types of annuities that are
6 owned by different class members in the putative
7 class?
8 MR. KERSTEN: Counsel, I object to the form
9 as ambiguous as to time.
10 THE WITNESS: Yeah, I'm not sure -- I'm not
11 sure how to answer that.
12 BY MR. GRIMSLEY:
13 Q There are putative class members in the class as we
14 saw defined earlier, some that have tax qualified
15 annuity policies and some that have non-tax qualified
16 annuity policies.
17 MR. KERSTEN: Same objection as before.
18 Ambiguous as to time.
19 THE WITNESS: I'm not sure.
20 BY MR. GRIMSLEY:
21 Q You understand that the putative class includes
22 people that had in-force annuity policies as of 1985?
23 A Yes, sir.
24 Q Are there any individuals who had in-force policies
25 as of 1985 who had tax-qualified annuity policies?

1 A I'm not sure.
2 Q Are there any individuals in the -- who had in-force
3 policies as of 1985 who had non-tax-qualified annuity
4 policies?
5 A No.
6 MR. KERSTEN: Counsel, I object as a
7 continuing objection so I don't have to keep making
8 it. It's all ambiguous as to time.
9 THE WITNESS: Yeah, I'm not sure.
10 BY MR. GRIMSLEY:
11 Q You don't know whether any of the in-force policies
12 as of 1985 were tax qualified or not?
13 A I don't recall, I reviewed that at some time years
14 ago.
15 Q You do know that there are different DIR rates
16 applicable to tax qualified versus non-tax qualified?
17 A There are different DIR rates applied to different
18 categorizations, yes.
19 Q You have not, in fact, taken into account the
20 different DIR rates that apply to tax qualified
21 versus non-tax qualified annuity policies in your
22 model, in your March 4th, 2013 report, have you?
23 MR. KERSTEN: Same objection, ambiguous in
24 form as to time.
25 THE WITNESS: Yeah, I believe I have

1 incorporated that fairly and equitably.
2 BY MR. GRIMSLEY:
3 Q Is there anyplace in your report that you can point
4 me to where you talk about the distinction in DIRs
5 with regard to tax qualified versus non-tax qualified
6 policies that were in-force as of 1985?
7 A It's not stated in the report.
8 Q And your model does not specifically differentiate
9 between the DIRs applicable to tax-qualified versus
10 non-tax-qualified policies?
11 A I think it incorporates the two to the extent they
12 exist and does so properly and equitably.
13 Q But does it actually delineate what the DIRs would be
14 for each of those types of policies in the "but-for"
15 world?
16 A No, I do not believe in the "but-for" world that
17 that's appropriate.
18 Q How does your model account for the fact that in the
19 "but-for" world some policies would have been tax
20 qualified and some would have been non-tax qualified?
21 MR. KERSTEN: Objection as ambiguous in
22 form because of the timing.
23 THE WITNESS: Yeah, it looks to be the
24 aggregate -- aggregate compilation of both of those
25 and I believe it accurately reflects the existence of

1 that to the extent that they were there.

2 BY MR. GRIMSLEY:

3 Q Have you done any -- made any effort to quantify what

4 the differential in DIRs would be in the "but-for"

5 world for Pre-MN annuitants with tax qualified versus

6 non-tax qualified policies at any time during the

7 class period?

8 A Only to the extent whether that would materially

9 misstate the differences that we quantified and

10 concluded they would not.

11 Q What did you do to actually determine there would be

12 no material misstatement as a result of tax qualified

13 versus non-tax qualified?

14 A Again, the "but-for" world is theoretical and it's

15 representative and there is nothing that came to

16 our -- my awareness that there would be a necessity

17 to subset the methodology such as we did for various

18 interest rates -- policy loan rates, rather. That

19 differential was immaterial.

20 Q But you made no quantification of that differential?

21 A Again, only to the extent that our formula was a

22 reasonable representation of what would be

23 applicable.

24 Q Where is the quantification in the report of the

25 differential between tax qualified and non-tax

1 qualified DIRs in the "but-for" world?

2 MR. KERSTEN: Objection as repetitious.

3 THE WITNESS: I just said that was done as

4 an analysis, not as a quantification.

5 BY MR. GRIMSLEY:

6 Q Where is the analysis?

7 A The analysis was done prior to me stating this

8 formulation and this numerical approach and formulaic

9 approach as being representative for all Pre-MN

10 annuitant class members.

11 Q What specific analysis did you do to take into

12 account the difference in tax qualified versus

13 non-tax qualified DIRs?

14 A I just looked at those policies, looked at the

15 historical disparity, and concluded that this was a

16 reasonable representation for those policies.

17 Q Did you do any mathematical analysis to back that up?

18 A The analysis results in a mathematical result, which

19 is that to the extent there would be materiality such

20 as was found for various policy loan rates, that

21 would require the formula to reflect that difference.

22 My analysis in regard to what you are now stating is

23 that they -- the "but-for" world is a reasonable

24 representation of that differential and accurately

25 reflects the difference for those policies.

1 Q Well, I would like to be able to assess for myself

2 whether it's a reasonable representation, and so to

3 that extent I would like to know specifically what

4 analysis you performed that you consider reasonable

5 to determine that the differential between tax

6 qualified and non-tax qualified DIRs is immaterial.

7 MR. KERSTEN: Objection as repetitious.

8 What you yourself would like to do is also totally

9 immaterial to the case.

10 THE WITNESS: Yeah.

11 MR. KERSTEN: Counsel, are you representing

12 on this record that there is a difference between

13 these from and after 1985 in the respect to which you

14 have been questioning this witness?

15 MR. GRIMSLEY: I'm asking if this witness

16 has taken that into account.

17 THE WITNESS: Yes.

18 MR. KERSTEN: Taking what into account?

19 MR. GRIMSLEY: George, seriously.

20 MR. KERSTEN: I'm very serious. Are you

21 representing that there is a difference between these

22 Pre-MN policies from and after 1985? Are you stating

23 that as a foundation?

24 MR. GRIMSLEY: I will state to you as a

25 foundation that prior to the 1985 change there was a

1 difference in DIRs for tax-qualified and

2 non-tax-qualified policies, and his "but-for" world

3 is a world in which there was no 1985 change so I

4 can't represent what the facts would have been in

5 that circumstance, as he has acknowledged numerous

6 times. So I am asking him whether he took into

7 account what the impact would have been of

8 calculations of DIRs for non-tax-qualified versus

9 tax-qualified policies as they existed prior to 1985

10 in coming up with his DIRs in the "but-for" world.

11 That is my question.

12 MR. KERSTEN: Just hold on, Sean. My

13 question is -- My point and my objections go to a

14 different point. Are you stating there is a

15 difference between what you characterize as tax

16 qualified and non-tax qualified in the years

17 beginning with January 1, 1986? Yes or no.

18 MR. GRIMSLEY: I believe so.

19 MR. KERSTEN: That's your understanding.

20 That's the record I wanted to make.

21 BY MR. GRIMSLEY:

22 Q You didn't take that into account?

23 A Is that a question?

24 Q Yes.

25 A I don't know how to answer it, "you didn't take that

1 into account." What's your question? That's not a
 2 question.
 3 Q Let's look back --
 4 A That's not a question. What is your question?
 5 Q I will withdraw it. Let's look back at [Exhibit 5](#).
 6 A Okay, good.
 7 Q Okay? Do you know how in the real world Northwestern
 8 Mutual came up with the differential between the
 9 Pre-MN DIR rate and the life DIR rate?
 10 A No, I do not.
 11 Q Did you make any effort to determine how?
 12 A For [Exhibit 5](#)?
 13 Q Yes.
 14 A I will state again, that I have seen several
 15 comparable exhibits, some of which had Pre-MN
 16 annuitants receiving a higher DIR than life in
 17 certain years, some of which they had the same, so
 18 this is not the only exhibit which compares life and
 19 Pre-MN annuitants. And I could tomorrow send you
 20 another document in this case which shows that Pre-MN
 21 annuitants received a higher DIR than life rates in
 22 certain years.
 23 Q Will you send me that document tomorrow?
 24 A Certainly.
 25 MR. KERSTEN: Well, we will take that into

1 consideration. We will send you something.
 2 BY MR. GRIMSLEY:
 3 Q But you do acknowledge that there were different
 4 rates for Pre-MN annuities and life insurance
 5 policies prior to 1985?
 6 A Yes, as stated in my report. My assumption is based
 7 on historical comparability, not equality.
 8 Q Did you do anything to determine how Northwestern
 9 Mutual in the years prior to the 1985 change
 10 calculated the differential between the Pre-MN
 11 annuity DIR and the life DIR?
 12 A Yes.
 13 Q What did you do?
 14 A I looked at their dividend formulas and I looked at
 15 policies and compared and contrasted.
 16 Q Okay. And did you apply any of that in the "but-for"
 17 world in which you assumed that the annuity policy
 18 rate and the life policy rate would be the same each
 19 year?
 20 A Yes.
 21 Q Did you attempt to yourself calculate on a yearly
 22 basis what the differential in the life rate DIR and
 23 the Pre-MN DIR would have been had there not been the
 24 1985 change?
 25 A Yes.

1 Q And what was your conclusion?
 2 A That there is an immaterial difference between the
 3 two as stated in my report; and that the life rate,
 4 which is a benchmark rate, which is a readily
 5 available rate, which is well defined and understood,
 6 was not only reasonable, but the -- the most accurate
 7 representation of what the annuity rate should be.
 8 Q Are there any calculations anywhere in your report to
 9 reflect the analysis that you have just described?
 10 A No, there are not.
 11 Q Where could I find those calculations?
 12 A I don't think they exist.
 13 Q So you did not do any calculations to determine the
 14 reasonableness of your assumption that the life and
 15 Pre-MN DIRs would be identical to one another in the
 16 "but-for" world even though they were not in the
 17 actual world prior to the 1985 change?
 18 A I did not do such calculations because I conclude
 19 that such calculations are irrelevant and
 20 unnecessary. I do analysis and I make conclusions.
 21 Sometimes I adjunct my analysis with quantification,
 22 but that's hardly a basis for an opinion in all
 23 instances.
 24 MR. KERSTEN: I didn't have a chance, but I
 25 object on the great amount of repetition on what is

1 essentially testified to in excess of 15 times, if
 2 not more, and is essentially irrelevant, so I object
 3 to this waste of time.
 4 BY MR. GRIMSLEY:
 5 Q Do you consider a .4 basis point differential to be
 6 material?
 7 MR. KERSTEN: Object as to form as to
 8 insufficient information.
 9 THE WITNESS: Yeah, it would depend on the
 10 instance, and I don't know what .4 you're talking
 11 about and where that comes to play.
 12 BY MR. GRIMSLEY:
 13 Q Looking at 1985, where there is a .4 basis point
 14 differential or a 40 basis point differential between
 15 the life and Pre-MN rates, in your view is that a
 16 material difference?
 17 A A material difference for what?
 18 Q For somebody owning a Pre-MN annuity versus somebody
 19 owning a life insurance policy?
 20 A For purposes of the assumption that I made, it is
 21 possible only looking at this one piece of paper to
 22 say that there is a clear and apparent trend that the
 23 Pre-MN rate is getting larger relative to the life
 24 rate every year up until '85, so it's not
 25 unreasonable to make the conclusion that if that

1 obvious trend per this exhibit were to continue, that
2 an appropriate assumption would be the Pre-MN
3 annuitant rate would be much higher than the life
4 rate.

5 I have seen other exhibits in addition
6 to this [Exhibit 5](#) which show different differentials,
7 and I conclude that the appropriate and the
8 reasonable representation for what the annuity rate
9 will be or would be in a "but-for" world after '85 is
10 precisely and exactly equal to the life rate.

11 MR. KERSTEN: Counsel, you have gotten the
12 same answer twenty times, but it's now ten after
13 12:00.

14 MR. GRIMSLEY: Lunch is fine.

15 MR. KERSTEN: And we can go off the record.

16 MR. GRIMSLEY: We will do one question
17 first.

18 MR. KERSTEN: Okay.

19 BY MR. GRIMSLEY:

20 Q Did you identify in your report all of the exhibits
21 and documents that you did, in fact, rely upon in
22 coming to the opinions that you just provided?

23 A That I just provided in the last question?

24 Q In regards to your determination that the assumption
25 of identity in the "but-for" world of the Pre-MN

1 annuity and life DIRs is reasonable.

2 A I've never made that assumption, an assumption of
3 identity. What I have assumed is that the,
4 again, readily apparent, well-known life rate is the
5 best, most reasonable, most accurate representation
6 of what the Pre-MN annuity rate would be thereafter.
7 But as I state in Paragraph 25, there is not an
8 identity issue here, there is comparability.

9 Q Well, in fact in your model, though, sir, you have
10 assumed that the DIR rate would be identical?

11 A I have assumed that the best estimate for the Pre-MN
12 annuitant DIR would be to use the benchmark life
13 rate, which is well known, readily available, readily
14 apparent, and as stated several bullets here in
15 Paragraph 25 as to why that is the case, that that
16 makes the best representation that can be done.

17 Q But in your mind, it is nevertheless an estimate?

18 A Absolutely.

19 Q And did you identify all documents you relied on in
20 determining the reasonableness of that estimate?

21 A There is an attachment to my report which shows items
22 that I am -- that I have been provided. But as I
23 indicated earlier, I have been involved in some
24 aspect of this or related cases in this regard for
25 numerous years and some of the basis is a cumulative

1 knowledge, and so exactly what was handed me in the
2 last month is not the full basis for my ability to
3 opine.

4 Q But did you consider in coming to your opinion that
5 these were reasonable estimates for but-for DIRs, the
6 fact that the annuity and life rate DIRs prior to
7 1985 were different in some years?

8 A That's a fact, they were different in some years.

9 Q And --

10 A As I state here, it's the historical comparability in
11 addition to several other rational bullets points
12 that I have expressed in my report on Paragraph 25
13 that enabled me to conclude that that is the -- not
14 only a reasonable estimate, but it's the best
15 estimate. It's the most reliable estimate, it's
16 readily apparent, it's readily available. It -- It
17 fairly reflects what is appropriate for a "but-for"
18 world.

19 Q To the extent there were documents that you saw that
20 showed the annuity rate being higher than the life
21 rate in the years prior to the 1985 change, would
22 those have been documents that you would have
23 considered and relied upon in coming to your
24 assessment of the reasonableness of your estimate?

25 A I state it's the historical comparability between,

1 that is one of the reasons for enabling me to
2 conclude as such, and so looking at those historical
3 disparities was certainly part of that basis, yes,
4 sir.

5 Q Would you have then cited in your report as a
6 document upon which you relied documents that showed
7 that the annuity rate was higher than the life rate
8 in some years prior to 1985?

9 MR. KERSTEN: Are you asking whether
10 documents showing that are on the list?

11 BY MR. GRIMSLEY:

12 Q Yes.

13 A Yeah, I have seen so many of these over the years,
14 and I was well aware of that prior to receiving any
15 information on this. All of those documents, to the
16 extent that I saw them, were identified in previous
17 reports perhaps, or this one. There is certainly
18 nothing that I have ever seen that hasn't been
19 identified as a -- as information that was provided
20 to me, so it's very hard to answer your question
21 because of that duration of involvement. I have seen
22 several reports along the lines of this [Exhibit 5](#)
23 which show values which are somewhat different than
24 [Exhibit 5](#).

25 MR. GRIMSLEY: Break for lunch?

THE WITNESS: (Witness nods.)

THE VIDEOGRAPHER: Going off the record.

The time, 12:17 p.m.

(Off the record.)

THE VIDEOGRAPHER: We're back on the record

at 1:02 p.m.

BY MR. GRIMSLEY:

Q Mr. Hoyer, we were talking before lunch about an analysis you had done to determine that it was reasonable to assume that the Pre-MN annuity rate and life rate would have been the same in the "but-for" world. Do you recall those questions and answers?

A Yes, sir.

Q How would I go about recreating the analysis that you did to come to your conclusion regarding the reasonableness of that assumption?

A Well, I think you would start by taking actuarial exams.

Q What else would I do to actually recreate the analysis that you did?

A If you get through that, after that many years, I will tell you the rest. But that's obviously the basis for any analysis I do is the experience and training that I have. So it's very difficult for me to answer the question because it certainly is a

function of everything I have ever done in the industry.

Q Imagine a world in which we have an expert ourselves who has actuarial expertise. Can you explain to that individual how he or she would recreate the analysis that you undertook to come up with your opinion that assuming the life rate and Pre-MN rate would be the same in the "but-for" world was reasonable?

A Yeah, I did an analysis, and the result of that analysis was an opinion -- my opinion that those two rates, that the life rate is not only a reasonable representation of the annuity rate, but the most fair, equitable, and appropriate rate that can be -- that can be assumed.

So that's my opinion based on my analysis. What did I do to analyze that? Well, I have in my report on Paragraph 25 several factors which were incorporated in my review and support that opinion and conclusion.

Q Do the four factors that are -- five factors, I'm sorry, that are set forth in Paragraph 25 of your March 4th, 2013 report accurately and completely represent the analysis that you performed to determine that your assumption regarding the comparability of life rates and annuity rates in the

"but-for" world was reasonable?

A That summarizes the material rationale for that opinion.

Q How would an expert who wanted to test your analysis recreate the analysis that you conducted in order to determine whether that analysis was valid?

A Well, I would suggest that they would ask themselves the questions specified in those bullet points and reach a conclusion regarding each of those items; and if that were done, I think their opinion, if they were a reasonable practitioner, would be very consistent with my opinion.

Q Let's look at Paragraph 25, the second bullet point. How would an expert recreate the analysis that you performed to determine the historical comparability between DIRs for life insurance and annuity policyholders prior to the 1985 change?

A It's just a review of numerical values, some of which are represented on the trial exhibit that you provided earlier today and some of which are represented on other exhibits that I have reviewed.

Q Can you point out which exhibits an expert attempting to test the validity of your analysis would need to look at?

A Every exhibit available which provides historical

Pre-MN annuity and life insurance DIRs that were made available should be reviewed, analyzed, and an opinion formed based on that review. I have looked at that. I have seen differences such as you have cited. I have seen comparability in other years. I have seen trends. And putting those items together and saying what would a reasonable practitioner expect to happen after 1985, in my opinion, based on my analysis, that using the life rate as the Pre-MN annuitant rate is reasonable, prudent, fair, and an accurate reflection of what would happen.

Q You mentioned that there are a number of exhibits that have historical information regarding life insurance and annuity DIRs; correct?

A Yes, sir.

Q And did you take all of those that you have seen into account in your analysis?

A Absolutely.

Q So you relied upon those documents in your analysis?

A Absolutely. That is a part of my analysis, was to review those documents.

Q Please take a look at Appendix B to your report, which is the last page, I believe, of your March 4th, 2013 report. Are you there?

A Yes, sir.

Q And you will see that this is a list of documents upon which you -- or which you reviewed in addition to those that are cited in your June 30th, 2010 report and July 20th, 2010 deposition and then the trial.

MR. KERSTEN: Excuse me, counsel, I think you have misstated that. You may want to rephrase your question.

BY MR. GRIMSLEY:

Q Okay. This sets forth additional documents that you reviewed in preparation of your March 4th, 2013 report; correct?

MR. KERSTEN: Answer the question as best you can.

THE WITNESS: This represents any new documents that I received after that time period and certain of the older documents that I had reviewed, which are cited in this report. I'm spiking them out for reciting, so it's a combination.

BY MR. GRIMSLEY:

Q So you have the additional documents reviewed, and the first sentence of this page says, "In addition to the documents reviewed for my June 30th, 2010 report, July 20th, 2010 deposition, and November 16th and 17th, 2010 trial, I have reviewed the following." Do

you know whether that universe of documents in addition to the additional documents listed in Appendix B contains all of the documents you relied upon for your analysis?

A Again, let me make this clear to you. I'm saying in addition to documents I reviewed certain new documents of which I spike out, but I'm also spiking out some of the old documents. For example, trial Exhibit 189, just because it's cited in the report. That is not a new document, I have seen that prior to this last month. That was incorporated in the earlier items.

Now, since I did reports, I believe, prior to 2010, the 2010 report could say that in addition to what I had seen for a previous report I have looked at certain other new items, so this is kind of -- it's hard for me to answer your question with precision because that report could have also cited it.

(Deposition Exhibit No. 6 was marked for identification.)

BY MR. GRIMSLEY:

Q I'm showing you what has been marked as Deposition Exhibit No. 6. Would you take a look at that?

A (Witness complies.)

Q Can you go to -- What is Deposition Exhibit 6?

A It is a report that I issued on June 30th, 2010.

Q Is that the other report that you were just referring to, sir?

A No.

Q Are there other reports besides the one issued on June 30th, 2010 and the one issued on March 4th, 2013 that you have issued in this case?

A I said just a minute ago that I have issued reports prior to 2010 in cases related to this issue.

Q Okay. But I'm just trying to figure out whether these two reports do, in fact, contain all of the documents that you relied upon to come to your opinions in the March 4th, 2013 report; okay?

Looking now at Exhibit B to your June 30th, 2010 report and Appendix B to your March 4th, 2013 report, can you tell me whether all of the documents that you have relied upon in conducting your analyses and rendering your opinions in this report of March 4th, 2013 are contained in these two appendices?

A These are the only documents on which I have relied in formulating opinion.

Q So if there is a document out there that shows that the annuity rate was higher than the life rate at any

point in time prior to 1985, it would be referred to in one of these two appendices?

A I believe so.

Q But you don't know which document that would be or documents looking at the appendices here today?

A I'm not sure looking at the appendices here today.

Q We also discussed before the break some analysis that you had done to determine that your assumptions regarding end-of-year surrender, end-of-year deposits, and end-of-year withdrawal were reasonable. Do you recall that?

A Yes, sir.

Q Explain to me how an actuarial expert would go about recreating the analysis you performed to come to the conclusion that your assumptions were reasonable.

A Since the information that was provided to me for my analysis indicated cash items on an annual basis, I had to make some conclusion as to how to treat them. I could treat them as mid year, I could treat them end of year, beginning of year. There is various treatments that could be made. What I chose to do after analysis was to make an assumption regarding the treatment of those items in such a manner that if anything my analysis would be considered relatively conservative while still accurate.

1 Q How could an actuarial expert on our side of the
2 fence recreate the analysis that you performed in
3 order to test the validity of your assertion that
4 your assumptions are, in fact, conservative?
5 A I'm not sure how your individual or group would do
6 that, but I certainly could do that and they could as
7 well.
8 Q How would they do that?
9 A They would simply look at the implications of those
10 values and estimate what, if any, disparity would
11 result from using that assumption and proceed
12 accordingly. I have done so, I have analyzed the
13 implications and concluded that it's immaterial.
14 Q You did not, however, do any actual quantification or
15 calculations in performing that analysis?
16 A Only because having done thousands of comparable
17 analyses it was my opinion that a quantification was
18 unnecessary to formulate that opinion -- a numerical
19 calculation. I did an analytical calculation.
20 Q Did you reduce to writing anywhere that particular
21 analysis?
22 A Yes.
23 Q Where?
24 A In the report it specifies that I assumed end of year
25 for financial transactions, and I indicate in the

1 report that the implication of that estimate is to
2 render the difference somewhat conservatively stated,
3 but also in the report I indicate that the difference
4 is a fair and reasonable representation and an
5 accurate representation of such difference, so I
6 conclude that it is immaterial.
7 Q But where in the report do you include the actual
8 analysis itself that led you to conclude that the
9 assumptions you were making were conservative?
10 MR. KERSTEN: Objection as repetitious. Go
11 ahead and answer the question.
12 THE WITNESS: I made many, many analyses,
13 starting with can I respond to counsel's questions of
14 me. There is nothing in my report that writes out in
15 detail step by step what each of those analyses were.
16 As that example, I concluded and responded to
17 client -- to counsel that I can respond to their
18 question positively and a formulaic mechanical
19 process can be developed and proceeded accordingly.
20 I did not put in my report precisely how I reached
21 that conclusion nor do I think it's appropriate.
22 That's not what they asked. They asked can I do it,
23 I analyzed, concluded I could. It's not in the
24 report.
25 BY MR. GRIMSLEY:

1 Q Was your analysis part of the bases for the opinions
2 that you provided in your report?
3 A Every aspect of my consideration and analysis was
4 utilized and evolved into the report that's been
5 provided to you.
6 Q I'm just asking whether the analyses that you
7 performed provided at least some of the basis for the
8 opinions that you rendered in your report.
9 MR. KERSTEN: Object as to the ambiguity in
10 the question.
11 THE WITNESS: Yeah, I'm not sure which -- I
12 said I have done numerous, numerous analyses in
13 developing and formulating this report, starting
14 with, I'm using as an example, client -- counsel
15 asked me a question, can I respond to it. I do an
16 analysis. I concluded yes, I can. That's just one
17 example of an analysis and a conclusion. I don't
18 have step by step how I reached that conclusion to
19 get back to them. I don't think it's appropriate to
20 put in the report. There is many analyses that I
21 did. They're not step by step shown here.
22 BY MR. GRIMSLEY:
23 Q Let's --
24 A What is shown here is the basis for the approach that
25 I developed and why I think it's an accurate and

1 reasonable reflection of the difference.
2 Q Let's take your analysis that you just used as your
3 example of whether you could answer the first
4 question that was posed in Paragraph 6, bullet point
5 one; okay?
6 A Yes, sir.
7 Q And you said you performed that analysis, but you did
8 not put it in your report?
9 MR. KERSTEN: Wait a minute. I object to
10 that as not a fair characterization of this
11 testimony, and I also object on the ground that in
12 addition to that error as to form, I object to the
13 total waste of time of all of this.
14 THE WITNESS: I'm sorry, I'm going to have
15 to hear your question one more time, please.
16 BY MR. GRIMSLEY:
17 Q Yeah. You had given the example of an analysis that
18 you performed that resulted in the opinion that you
19 could, in fact, perform calculation of accumulated
20 difference on a class-wide basis. Do you recall
21 that?
22 A Specific to the question that's asked, which is on a
23 class-wide basis and an individual basis, for those
24 still in force, for those who terminated, there was a
25 few questions that are shown there. But before I

1 entered into doing the analysis, I had to -- before I
2 developed the methodology I had to do an analysis to
3 see if it's appropriate to go down that path and
4 whether it was likely that I can surface with an
5 appropriate answer to the question.

6 And I did that analysis, I called
7 counsel back, and indicated that based on the
8 information I have seen and my knowledge of the
9 situation, I think we have sufficient information and
10 that the -- any other information would be readily
11 available to enable those questions to be answered
12 positively.

13 Q Did that analysis that you performed prior to
14 answering counsel's question form the basis for some
15 of the opinions that are set forth in your report?

16 MR. KERSTEN: Objection as to ambiguous as
17 to form.

18 THE WITNESS: No, that's not a basis for
19 the opinions. That indicated that I should proceed
20 to make a development of that methodology, and the
21 methodology itself provides the basis for the
22 opinions.

23 BY MR. GRIMSLEY:

24 Q Well, let's turn to the analysis that you performed
25 to -- that led you to conclude that your assumptions

1 were generally conservative. Did that analysis form
2 the basis of any of your opinions in this report?

3 A The analysis that -- and we talked about one, the --
4 whether the cash transactions, how they should be
5 treated. Since I only had them on an annual basis,
6 by definition I had to do -- make some sort of
7 assumption as to when they transacted. I also
8 indicate that what I have developed here is in no
9 way, shape, or form dependent on that assumption.
10 But for purposes of presentation in this report, I
11 purposely assumed the most conservative approach.

12 Q But you did perform an analysis of some sort to
13 determine that your approach was conservative;
14 correct?

15 A Absolutely.

16 MR. KERSTEN: Objection as repeatedly
17 repetitious.

18 THE WITNESS: Yes, sir.

19 BY MR. GRIMSLEY:

20 Q And I just wanted to know, it's really simple,
21 whether that analysis that you performed can be found
22 anywhere in the report itself.

23 MR. KERSTEN: Same objection.

24 THE WITNESS: In the report you can see
25 that I considered how to treat cash items. I

1 indicate in the report that I treated them as year
2 end. I indicated in the report that if anything that
3 is a conservative approach, and then I also indicate
4 in the report that to the extent additional
5 information were made available that this methodology
6 would incorporate it and then you wouldn't have that
7 assumption.

8 BY MR. GRIMSLEY:

9 Q In your report you distinguish between policyholders
10 that have direct recognition and those that do not?

11 A Yes, sir.

12 Q And whether a policyholder has direct recognition or
13 not depends on whether that policyholder agreed to
14 Update '83?

15 MR. KERSTEN: Objection. Counsel, are
16 you -- I object to the ambiguity of that question as
17 do you mean the agreement upon purchasing a contract?
18 Does that include that?

19 BY MR. GRIMSLEY:

20 Q Whether a policyholder in the putative class has
21 direct recognition or not would depend on whether
22 that policyholder had agreed to Update '83; right?

23 MR. KERSTEN: That's not correct the way
24 you have asked it.

25 THE WITNESS: I can answer it.

1 MR. GRIMSLEY: Yeah, he can answer the
2 question.

3 MR. KERSTEN: I think you're wrong on that,
4 Sean.

5 MR. GRIMSLEY: That's fine. He can answer
6 the question. He's the expert, he can tell me if I'm
7 wrong.

8 THE WITNESS: In part, and not in total.

9 BY MR. GRIMSLEY:

10 Q What do you mean by that?

11 A I mean that you're partially correct and not all
12 correct.

13 Q In what way am I not correct?

14 A The Update '83 was something that happened prior to
15 the class -- the defining of the class group. And
16 for policies that were issued after Update '83, I
17 think they were all on direct recognition, if I'm not
18 mistaken. So some people opted into that, other
19 people bought into that.

20 MR. KERSTEN: Sean, that is what I was
21 trying to alert you too.

22 MR. GRIMSLEY: That's fine, that's why I'm
23 asking questions.

24 BY MR. GRIMSLEY:

25 Q So there are some policyholders after 1983 who had

1 direct recognition who had not opted for Update '83.
2 But with regard to policyholders who purchased their
3 policy prior to 1983, in order for those to have
4 direct recognition, they would have had to opt for
5 Update '83?

6 A I agree with your statement other than you're using
7 "83" as a definitive, and in fact the exact timing or
8 implementation of that was not necessarily '83 per
9 se, but that's your -- what you said was correct.

10 Q I'm just using "Update '83" to refer to the update,
11 because I think lots of people have referred to it
12 that way. Have you seen it referred to that way?

13 A Referred to that way, but the implementation of
14 which, you know, wasn't strictly '83 per se.

15 Q How would your model account for the possibility of a
16 Pre-MN annuity policyholder who purchased their
17 annuity prior to 1983 having chosen to agree to
18 Update '83 during the class period, meaning after
19 1985?

20 A I'm not sure how many there were. It's a fairly
21 small group, first of all; but it would treat them as
22 direct recognition Pre-MN annuitants after the time
23 which they accepted direct recognition or Update '83.

24 Q But each of those individuals, if they had accepted
25 Update '83 after the 1985 change, would have its own

1 individual set of grids based on when that individual
2 actually accepted Update '83; correct?

3 MR. KERSTEN: Objection as multiple in
4 form.

5 THE WITNESS: No, you would not need
6 multiple grids. The opinion of treatment of those
7 who have accepted Update '83 or direct recognition
8 and those who did not, I think within this formula,
9 without trying to nitpick the formula for a few
10 individuals for a couple of years, it's immaterial
11 and hence the opinions that I made or the
12 assumptions, however you want to categorize them, I
13 think accurately and fairly reflect all individuals,
14 not -- you know, including a couple who may have
15 changed it during a certain period of time.

16 BY MR. GRIMSLEY:

17 Q Do you know how many of the putative class members
18 actually accepted and agreed to Update '83 after the
19 1985 change had been implemented?

20 A I'm not sure precisely.

21 Q Have you looked into that in preparing your opinions
22 that are set forth in the March 4th, 2013 report?

23 A I'm sorry, say that question again.

24 Q Did you look into that question in preparing the
25 opinions that are set forth in your March 4th, 2013

1 report?

2 A Yes.

3 Q And what analysis did you perform to determine that
4 it was immaterial to your model that certain
5 individuals agreed to Update '83 only after
6 implementation of the 1985 change?

7 A Well, I have been made aware, I have seen evidential
8 matter which shows how many individuals there are in
9 the group, how that number has changed over time,
10 percentages of those who are in direct recognition or
11 accepted Update '83 versus those that did not, and
12 I'm comfortable that having seen as much information
13 in that regard as I could have, that the formulaic
14 mechanical approach that I have provided fairly and
15 accurately reflects every one of those Pre-MN
16 annuitants' situations and that the difference that I
17 quantify is a fair and reasonable representation of
18 that difference.

19 Q How would somebody with actuarial expertise go about
20 recreating the analysis that you performed to
21 determine that it was immaterial to your model that
22 certain individuals accepted Update '83 after the
23 1985 change had been implemented?

24 A They would have to review numerous documents that had
25 the kinds of numbers that I was just alluding to.

1 How many are in the group, how many opted for Update
2 '83, when they did so, and that would be I think
3 sufficient basis for a reasonable person with
4 knowledge in this area to make an informed opinion as
5 I did.

6 Q But just to be clear, you don't know today how many
7 people actually agreed to Update '83 after the '85
8 change was made?

9 A I don't have a number, no.

10 Q Do you know how much in terms of the amount invested
11 in annuities was accounted for by individuals who
12 accepted the 1983 change after -- or the 1983 update
13 after the 1985 change had been put in place?

14 A I saw that in the totality of evidential matter that
15 I reviewed over the years of this case, and I know it
16 in sufficient detail to conclude that my opinion in
17 this regard is reasonable and accurate, and I'm
18 satisfied that any outlier would be immaterial to
19 such quantification.

20 Q Is there anywhere in your report where you discuss
21 the question of the potential impact on your analysis
22 of the fact that some number of putative class
23 members accepted the 1983 update after implementation
24 of the 1985 change?

25 A Yes.

1 Q Where?

2 A Where I conclude that this formula and its

3 application represents a fair and reasonable and

4 accurate representation of that difference. I could

5 not reach that conclusion without having considered

6 the implications of various outliers, subtleties,

7 nuances, trends, and differences that existed which

8 are a part of reaching that conclusion.

9 Q I understand that you have the conclusion in here, so

10 I don't want to be confusing, but did you include in

11 the report itself the underlying analysis that led

12 you to conclude that it was immaterial to your model

13 that certain individuals had accepted Update '83

14 after the 1985 change?

15 MR. KERSTEN: Objection as repetitious.

16 THE WITNESS: No, it's not spelled out in

17 detail in this report.

18 BY MR. GRIMSLEY:

19 Q Let's assume your model that's in your report and a

20 hypothetical class member who accepted the 1983

21 change after -- or I'm sorry.

22 Let's assume your model that is set

23 forth in your report and assume also that there is a

24 class member who agreed to Update '83 after the 1985

25 change. Say, for instance, sometime in 1986. Okay?

1 A Fine.

2 Q In order to calculate the accumulated difference for

3 that particular individual, would you need to know

4 when specifically that individual agreed to Update

5 '83?

6 A Absolutely unequivocally, no.

7 Q Wouldn't the amount in the account at the time the

8 policyholder agreed to Update '83 be influenced by

9 the fact that prior to that time the policyholder did

10 not have direct recognition?

11 A For three months? The answer is it's immaterial.

12 Q How about if we move it to 1988?

13 A Well, as stated in the report, the quantification of

14 difference begins in 1993 for presentation purposes.

15 We can apply the same formula to any individual in

16 the class. But for purposes of presentation, we have

17 started in 1993, so the formula would handle that

18 person absolutely accurately, properly, and he would

19 be starting in the direct recognition class for when

20 he made the change to direct recognition. The

21 formula accepts that with no problem.

22 Q But each individual who accepted direct recognition

23 after the 1985 change may have a different date upon

24 which they did it?

25 A It's irrelevant and immaterial.

1 Q But the date on which the individual accepted direct

2 recognition would impact how you apply the model,

3 would it not?

4 A It would not.

5 Q If somebody accepted direct recognition in 1987,

6 their accumulated difference would be different 10

7 years later than somebody who accepted it in 1988,

8 would it not?

9 A Individually there may be a difference which is

10 immaterial, and that's why the formula works. That's

11 why it is the best representation of difference,

12 that's why it's a fair and accurate presentation of

13 difference, and that's why it is in fact not only

14 fair, it's the best estimate of the difference. It's

15 immaterial that a person took direct recognition on

16 March 30th, 1986 or May 5th, 1986. The

17 quantification of difference either to date for those

18 remaining in force or until the date of their

19 termination can be quantified accurately, reasonably,

20 and fairly using this process, and there is no

21 material difference. It's irrelevant.

22 Q Would there be a material difference if the person

23 had switched from direct recognition in 1986 versus

24 1990?

25 A Only for those -- only for those individuals who

1 terminated in that duration, and obviously they

2 couldn't have opted for direct recognition in 1990

3 and terminated in 1988, but that's the only case

4 where that information would be pertinent. And since

5 it applies only to those who terminated during the

6 period in which you are asking your question, that

7 no, I do not care, and the reason I do not care is

8 because it does not impact the answer. There is an

9 immaterial difference.

10 Q Let's take out of the hypothetical you were just

11 talking about somebody surrendering before they

12 accepted direct recognition. Let's assume they

13 surrendered in 2000. Would there be a difference --

14 an accumulated difference for that person if they had

15 adopted direct recognition in 1986 versus adopting it

16 in 1990?

17 A The answer is no to any material extent.

18 Q Have you done any actual calculation to make that

19 determination?

20 A Yes. Any analysis, yes. "Calculation," you keep

21 referring to that. Calculation is done to augment

22 analysis as appropriate. Analysis incorporates

23 numerical assessment. I did numerical assessment,

24 not calculation.

25 Q What numerical assessment did you perform to conclude

1 that the difference in taking direct recognition in
2 1986 and 1990 would have been immaterial for somebody
3 who surrendered their policy later?
4 A By looking at the values that we have developed and
5 by saying what if a different treatment had been
6 utilized and in applying that in a numerical sense, I
7 conclude that there is no material difference.
8 Q How would an actuarial expert recreate that analysis
9 that you just described?
10 A By doing just what I just described. By looking at
11 the values that are shown in this report and
12 hypothetically applying them to those two scenarios.
13 And when you do so, you will get no material
14 distinction.
15 Q Did you in any way memorialize in writing the process
16 of the analysis that you performed that you just
17 described?
18 A No, because it's irrelevant to the conclusions that I
19 reached. Irrelevant in the sense that I have
20 considered alternatives and I am -- and I concluded
21 that in my opinion that this formula meets the
22 objectives and it attains the goals that I have said
23 in the report and that there is no outliers or
24 fluctuations or considerations or anything else of a
25 material nature that I have not considered.

1 Q So let's assume, again, somebody who opted for direct
2 recognition in 1990.
3 MR. KERSTEN: Is there such a person,
4 counsel?
5 THE WITNESS: Yeah, I said it's de minimis.
6 BY MR. GRIMSLEY:
7 Q Let's just assume hypothetically.
8 MR. KERSTEN: Wait a minute now. Is there
9 any foundation for that assumption, counsel?
10 BY MR. GRIMSLEY:
11 Q Let's assume hypothetically that there is somebody
12 who in 1992 adopted direct recognition.
13 MR. KERSTEN: Same objection. There is no
14 foundation at all for these that I'm aware of. If
15 counsel is aware of any conceivable foundation, I ask
16 that he so state.
17 BY MR. GRIMSLEY:
18 Q I'm assuming a hypothetical.
19 A And the question is?
20 Q Assume that somebody adopted direct recognition in
21 1990.
22 A Right.
23 Q Which grid would you apply to that individual in your
24 model, the direct recognition grid or the non-direct
25 recognition grid?

1 A For that hypothetical, the model would assume the
2 direct recognition grid.
3 Q Why?
4 A Because that accurately reflects the difference,
5 which is what we're trying to quantify. And the
6 difference is either a current difference, and the
7 direct recognition grid will do precisely that; or
8 they terminated it sometime prior to the current, and
9 the direct recognition grid will calculate a fair and
10 accurate number for that individual. And that, I
11 said, is a de minimis group in any case.
12 Q How many people would constitute a de minimis group?
13 A It would depend on the nature of the question being
14 asked and the situation.
15 Q Assuming a putative class of 19,000 people, what
16 would be a de minimis number in your mind of people
17 that accepted Update '83 after the 1985 change?
18 A Since the numerical calculation is immaterial in any
19 case, that -- how much would be de minimis? Perhaps
20 a lot, because the numerical calculation does not
21 give a numerical answer which is of any material
22 difference.
23 Q Now, you said for presentational purposes the report
24 presents accumulated differences beginning in the
25 year 1993?

1 A Yes, sir.
2 Q You did not, at least in the report itself, present
3 accumulated differences for the years 1985 through
4 1992; is that right?
5 A I did not show such differences for three of the four
6 categories which I define in the report. I'm only
7 showing one as a representation of how it can be done
8 and should be done. So to show that table from '93
9 on, those are the material years and that's why I
10 changed it at that time. So it's strictly for
11 presentation, but the formula exists and can apply to
12 all years, all policyholders, equitably and fairly.
13 Q What do you mean "strictly by presentation"?
14 A That for purposes of understanding, it is those --
15 I'm showing those years for which there are some
16 material difference.
17 Q Turn to Page 15 of your -- Do you mean to say there
18 is no material difference before 1993?
19 A What I mean to say is that these are the years for
20 which material difference is evident and that the
21 difference for earlier years is certainly less. Now,
22 an individual might have terminated their policy
23 prior to 1993, and for them the only quantification
24 would be prior to this date, and the formula handles
25 that. But just for presentation, we're showing it

1 from '93.

2 Q Applying your formula, it's true that there are

3 people who would have surrendered prior to 1993 whose

4 accumulated difference would have been zero or

5 negative; correct?

6 A Whose difference would have been zero or negative,

7 that is a possibility.

8 Q Did you do anything to determine how many putative

9 class members surrendered at a point in time where

10 their accumulated difference would have been zero or

11 negative?

12 A As I indicated earlier, I did see the values in terms

13 of number of policyholders and policyholder account

14 values by year over the period from '85 through

15 current, so I have an idea of what that would be,

16 yes.

17 Q Roughly what percentage of the putative class members

18 surrendered their policies prior to 1993?

19 A I don't recall offhand.

20 Q Do you have any sense of the magnitude?

21 A No.

22 Q But did you go through and apply your formula to

23 determine how many of those individuals would have an

24 accumulated difference of zero or a negative value?

25 A No, I didn't.

1 Q Those individuals, if they have an accumulated

2 difference of zero or a negative value, would not

3 have suffered any damages?

4 A That's false.

5 Q And why is that false?

6 A Again, you know, I have testified in court, that

7 question was asked precisely and directly. I will

8 try to reiterate what I already said. Every member

9 in this class was harmed the moment the change in '85

10 was made. The moment. None them had been

11 financially impacted at that time. They were all

12 damaged, they were all harmed at the moment the

13 change was made. The insurance company violated

14 their contractual obligations, they violated

15 generally accepted insurance practices and

16 procedures, they violated every agreement of fair and

17 equitable treatment of policyholders at that time, so

18 everyone was harmed at the second the change was

19 made.

20 Now, the numerical quantification is a

21 fundamentally different element, and that's done via

22 this formulation here. And as far as materiality is

23 concerned, it begins around 1993.

24 Q For somebody who was a Pre-MN annuity policyholder

25 who surrendered their policy prior to 1993, what is

1 the quantification of the damages to that person?

2 A Quantification of damages is a decision for the court

3 to decide upon. The financial implications are

4 relatively small -- relatively small for the group as

5 a whole, and that's why my presentation is as shown.

6 But the court would decide how to quantify their

7 damages. I have just spelled out a difference.

8 Q There are people, though, who surrendered their

9 policies prior to 1993 in the actual world who did

10 better from a financial perspective than they would

11 have in your "but-for" world?

12 A To a de minimis extent, to an immaterial extent, yes,

13 I would agree. Strictly from a financial standpoint.

14 Q Have you gone through and calculated what the actual

15 difference would be between the accumulated

16 difference in your "but-for" world and the actual

17 difference in the actual world for people who

18 actually were financially better off because they

19 surrendered before 1993?

20 A Certainly I have considered that, and it's

21 immaterial.

22 Q What's the amount?

23 A I don't know offhand, but I am well aware of its

24 relative magnitude and in my opinion it's immaterial.

25 Q Do you have a rough sense as to order of magnitude of

1 the amount?

2 A Yes.

3 Q What is the order of magnitude of the amount?

4 A Immaterial.

5 Q Is it thousands, tens of thousands of dollars,

6 hundreds of thousands?

7 A It certainly approaches the first of those three. It

8 is immaterial.

9 Q But you don't know sitting here today what it is?

10 A I do not have a numerical value for that.

11 Q If a person were intending to terminate their policy,

12 say in 1992, how would they have been harmed by the

13 implementation of the 1985 change?

14 A I just answered that. You want me to say the same

15 answer?

16 Q How would they have been financially harmed by the

17 implementation of the 1985 change?

18 A That's a different question. I will answer that one

19 now. Certain of those policies, you just indicated

20 that it's conceivable that someone may have by the

21 subsidies paid by Northwestern received any material,

22 but greater dollar amount. There is at least that

23 many people who also received not significant in

24 total, but to them it's their only value, and they

25 received less, so those people were harmed

1 financially by the change made in 1985.

2 Q Are you talking about people who actually surrendered

3 their policies prior to 1993?

4 A Yes.

5 Q And are those people who surrendered their policies

6 in the '86, '87 time period?

7 A I believe those people were financially harmed, yes.

8 Q And you believe that because those individuals

9 received an annuity rate that was somewhat less than

10 the life rate in the years 1986 and 1987?

11 A I believe that is the case.

12 Q But the presentation that you provide in your report

13 does not account for the accumulated difference of

14 those individuals, does it?

15 A Absolutely not. When I'm saying absolutely not, I'm

16 saying absolutely not it does not reflect. It

17 certainly reflects -- the methodology as laid out

18 here can apply to every individual in the group and

19 it would apply to those as well. So the methodology

20 is specified here. If someone surrendered their

21 policy in 1986, this methodology will apply to that

22 individual and quantify a difference, which is a

23 positive difference, meaning that they were

24 financially harmed to that extent, so it is within

25 this methodology.

1 Q But just looking at Paragraph 15 of your report --

2 I'm sorry, not paragraph, Page 15. That chart that

3 is shown there regarding the accumulated differences

4 by year, that does not include 1986 through 1992?

5 A The presentation is not shown here.

6 Q And I see it's very small. There is some negative

7 numbers in 1993?

8 A Yes, there are.

9 Q Does that mean that the accumulated difference for

10 individuals within that grid would actually be

11 negative?

12 A When you say "within that grid," what do you mean

13 "within that grid"? Because I don't think there is

14 any definition of what you are saying when you say

15 "within that grid."

16 Q The accumulated difference for somebody who invested

17 something in 1986, as of 1993, would be negative with

18 relation to the investment in 1986?

19 A For that particular transaction for that individual.

20 Now, that individual could also have contributed in

21 1989 three times as much and be financially harmed.

22 So when you say persons within the grid, I don't know

23 what you're saying because this just shows a year by

24 year accumulation, it doesn't indicate at all that

25 anyone who invested in 1986 would have a negative

1 damage or a negative difference.

2 Q But for somebody who terminated in 1987 -- or 1993,

3 I'm sorry.

4 A Uh-huh.

5 Q That person would have a negative accumulated

6 difference?

7 A That is incorrect.

8 Q Okay. Why is it incorrect?

9 A Because I just explained to you, that if they had

10 \$1,000 in at the time of the beginning of this class

11 and they contributed \$10,000 in 1989 and terminated

12 in '93, they would have an absolute positive

13 differential that would show damage or difference or

14 however you want to define that. These are year by

15 year. If you walk through the numerical calculation

16 that I have shown as an example for Ms. LaPlant, you

17 will see that.

18 MR. GRIMSLEY: Why don't we take a break.

19 THE VIDEOGRAPHER: This will conclude Disk

20 2. We're off the record at 2:01 p.m.

21 (Off the record.)

22 THE VIDEOGRAPHER: We're back on the

23 record, beginning of Disk No. 3 of the deposition of

24 Robert Hoyer. Today's date, May 17th, 2013. The

25 time, 2:12 p.m.

1 BY MR. GRIMSLEY:

2 Q Look at Table 9 in your report, Mr. Hoyer. On the Y

3 axis, for the years beginning at 1993, is that the

4 year of deposit?

5 MR. KERSTEN: Counsel, for the record, can

6 we understand "Y" is the vertical?

7 THE WITNESS: Yes.

8 MR. GRIMSLEY: Yes.

9 MR. KERSTEN: Okay.

10 MR. GRIMSLEY: I didn't say it was a

11 horizontal, did I? You just wanted to make clear for

12 the record?

13 MR. KERSTEN: Yes.

14 BY MR. GRIMSLEY:

15 Q I will start over. Mr. Hoyer, are the dates on the

16 vertical Y axis the dates of deposit or withdrawal in

17 Table 9?

18 A Neither.

19 Q What is signified by the dates on the vertical Y

20 axis?

21 A The year in a time basis.

22 Q That reflects what?

23 A The year it is.

24 Q So what --

25 A So 2005 reflects eight years ago, 2005.

1 Q So in the vertical Y axis under the column 1984, what
2 is signified by .05 next to the year 1995 -- or .06,
3 I'm sorry.
4 A I believe it's .06. That is the difference as
5 defined within the report for deposits -- net
6 deposits made in the year 1984 as of year end 1995.
7 Q So the years on -- in the Y vertical axis correspond
8 to a hypothetical year of withdrawal?
9 A No.
10 Q Look up at the title of the table. It says,
11 "Differences in rates of accumulation of net deposits
12 made by Pre-MN annuitants with direct recognition
13 deposited in column year and withdrawn in row year."
14 A Okay.
15 Q Does that make sense to you, looking at these numbers
16 at this point?
17 A Yes. If you -- if you happened to withdraw in 2005
18 and deposited in 1984, the difference would be 1.34
19 per dollar. If you didn't withdraw in 2005 and
20 maintained that deposit to the current, you would
21 look at the column or the row, rather, 2012. So it
22 would mean for withdrawal, if you withdrew, but the
23 majority don't withdraw in any particular year, the
24 majority keep in force.
25 Q So the deposit is in the year that's horizontal

1 across the top?
2 A That is correct.
3 Q And the hypothetical withdrawal is in the year in the
4 column on the left in the vertical Y axis?
5 A If a withdrawal was made in that year, that would be
6 the net difference, yes, sir.
7 Q Can you perform a -- Pull out [Exhibit 5](#), if you
8 would, which is the exhibit with the various life
9 interest rates and annuity interest rates after 1982.
10 Do you have that?
11 A Yes, sir.
12 Q Can you by chance tell me what the accumulated
13 difference would be for a deposit made in 1984 with a
14 hypothetical withdrawal date of 1991?
15 A Not by looking at this table; but by looking at the
16 previous tables, yes.
17 Q And what would the accumulated difference be in that
18 situation where there was a deposit in 1984 and a
19 withdrawal in 1991?
20 A It looks to be -- And these numbers are relatively
21 small in the copy of a copy that you provided for me,
22 it looks like it would be minus-2 cents.
23 Q Which page are you on -- looking at right now, sir?
24 A Pages 13 and 14. I would like to adjunct my last
25 answer by saying as specified and as indicated in the

1 report, what we are looking at is strictly for those
2 Pre-MN annuitants who opted for direct recognition
3 and have made no policy loans.
4 Q What would the accumulated difference be in the
5 "but-for" world for a deposit in 1984 that was
6 surrendered or withdrawn in 1990?
7 A 1990, it would be a penny.
8 Q That would be a penny for every dollar invested?
9 A Yes, sir.
10 Q And in 1991, the difference would be two pennies for
11 every dollar invested?
12 A I'm sorry, it would be one penny per dollar, that's
13 correct.
14 Q So that would be 1 percent difference?
15 A That's correct.
16 Q And in 1991 there would be a 2 percent difference for
17 a deposit in 1984?
18 A That is correct.
19 Q And that 1 percent difference for 1990 and 2 percent
20 difference for 1991 would be differences where the
21 Pre-MN annuity would be worth more in the actual
22 world than in the "but-for" world?
23 A The difference would be negative, yes, sir.
24 Q Just to be clear, what do you mean by "negative
25 difference"?

1 A The negative difference signifies for that one
2 deposit that the but-for determination is somewhat
3 less than the actual world determination.
4 Q Does that mean that if somebody had actually
5 surrendered in 1990 or 1991, they would have been
6 financially better off in the actual world than they
7 were in the "but-for" world?
8 A No.
9 Q Why not?
10 A Because we have done that for one deposit. Most
11 individuals, not all, have several years of deposits,
12 so we have done it for one deposit. And so those
13 individuals might have other deposits in other years
14 which swing the other way and hence would -- you
15 know, you have done a piece of one calculation.
16 Q What's the date that you actually assume the 1985
17 change took place specifically?
18 A I don't know -- recall offhand specifically what my
19 assumption was. We're looking here at year end '84,
20 so it's starting into '85 and it -- when I say "year
21 end '84," I'm talking about fiscal year '84, which
22 is, you know -- so inter-fiscal year 1985.
23 Q So assuming that the 1985 change took place at the
24 beginning of 1985, would the deposit amount for
25 purposes of your model existing in 1984 be the

1 accumulated amount in the account up to that point in
 2 time?
 3 A Yes, it would.
 4 Q And that would include all of the money that the
 5 policyholder had invested up to that date and any
 6 dividends it had received as well?
 7 A That's correct, for purposes of this exhibit which
 8 has no policy loans within it.
 9 Q So for purposes of the amount -- Put aside policy
 10 loans. For purposes of the amount that the annuity
 11 was worth as of the time of the 1985 change, looking
 12 just at that amount, people who surrendered in 1991
 13 and 1992 would have been financially better off in
 14 the actual world than in the "but-for" world?
 15 A If they made no further deposits, that is correct, to
 16 an immaterial amount.
 17 Q Have you -- in your view, is 2 percent an immaterial
 18 amount?
 19 A 2 percent is not immaterial to an individual. 2
 20 percent is 2 percent. Each individual can make their
 21 own determination. For purposes of this analysis,
 22 this methodology gives you a reasonable and accurate
 23 and fair and reasonable presentation of any
 24 difference.
 25 Q But in your opinion, for purposes of your

1 methodology, is that 2 percent difference immaterial?
 2 A Yes, that 2 percent, and we have just quantified
 3 exactly which one it is.
 4 Q Yes.
 5 A And the reason it's immaterial is because that one
 6 individual, given that situation, we have quantified
 7 no financial difference for those individuals, so the
 8 "but-for" world and this analysis would say that in
 9 that particular deposit for that one individual,
 10 there is no financial implication, vis-à-vis,
 11 difference.
 12 Q And I just want to be clear: In the group of
 13 putative class members, were there some who
 14 surrendered their policies at a particular time such
 15 that those individuals were not financially harmed by
 16 the 1985 change?
 17 A That is correct.
 18 Q How many people were there that would fit into that
 19 category?
 20 A A very small amount.
 21 (Deposition [Exhibit No. 7](#) was marked for
 22 identification.)
 23 BY MR. GRIMSLEY:
 24 Q I'm showing you what is being marked as Deposition
 25 [Exhibit 7](#), and this was a trial exhibit from the

1 state court trial, labeled trial exhibit No. 127. Do
 2 you recognize this chart?
 3 A I have seen charts along these lines, yes, sir.
 4 Q And do you see that in this chart there is in the
 5 left-hand column a year beginning with 1985 and in
 6 the right-hand column the number of Pre-MN policies
 7 in force at the end of each respective year?
 8 A Yes, sir.
 9 Q So between 19 -- the end of 1992 and the beginning of
 10 1985, you can from this chart calculate the number of
 11 policyholders that surrendered their policies or
 12 otherwise terminated; correct?
 13 A That's correct.
 14 Q Okay. So how many in-force policyholders terminated
 15 or otherwise surrendered their policies before 1993?
 16 Would that be 35,261 minus 21,420?
 17 A That is correct.
 18 Q Okay. So that would be 13,841?
 19 A That is correct.
 20 Q You would not characterize 13,841 people as de
 21 minimis or immaterial, would you?
 22 A Immaterial to the difference, absolutely.
 23 Q The difference in --
 24 A In what we have -- in what this formula will quantify
 25 as the difference for all individuals who terminated

1 in every year up to the current or remain in-force.
 2 That quantification of difference, this 14,000
 3 approximately or 13,000 individuals account for very
 4 little of that difference. They're immaterial to the
 5 difference.
 6 Q But you would not say that 13,841 people is an
 7 immaterial percentage of the overall number of Pre-MN
 8 policyholders?
 9 A That's a different question, I would never say that.
 10 Q Okay. You can tell, actually, from this chart how
 11 many Pre-MN annuity policyholders with policies in
 12 force as of 1985 surrendered their policies in 1990,
 13 1991, and 1992?
 14 A Yes, sir.
 15 Q In 1992 you can determine the number of people who
 16 surrendered their policies in that year by taking
 17 22,675 minus 21,420; is that correct?
 18 A That's correct.
 19 Q And that would yield a total of 1,255 people?
 20 A Yes, sir.
 21 Q You are not saying that that number of people is
 22 immaterial, vis-à-vis, the total number of people in
 23 the group of Pre-MN annuity policyholders who had
 24 in-force policies as of 1985, are you?
 25 A No, I'm not.